



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0143; FRL- 9805-1]

Approval and Promulgation of Implementation Plans; North Carolina:

Deferral of Carbon Dioxide (CO₂) Emissions from Prevention of Significant Deterioration (PSD) Requirements for Greenhouse Gases (GHG)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), on July 30, 2012. The SIP revision modifies North Carolina's prevention of significant deterioration (PSD) program to incorporate by reference (IBR) the federal deferral of, until July 21, 2014, PSD applicability to biogenic carbon dioxide (CO₂) emissions from bioenergy and other biogenic stationary sources. EPA is proposing to approve North Carolina's SIP revision because the Agency has preliminarily determined that it is consistent with the Clean Air Act (CAA or Act) and EPA's new source review (NSR) permitting regulations.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2013-0143 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: EPA-R04-OAR-2013-0143, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA-R04-OAR-2013-0143." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means

EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your

inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the North Carolina SIP, contact Mr. Richard Wong, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Wong's telephone number is (404) 562-8726; e-mail address: wong.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What Action is EPA Proposing?**
- II. What is the Background for EPA's Proposed Action?**
- III. What is EPA's Analysis of North Carolina's SIP Revision?**
- IV. Proposed Action**
- V. Statutory and Executive Order Reviews**

I. What Action is EPA Proposing?

On July 30, 2012, NC DENR submitted a SIP revision to EPA for approval into the North Carolina SIP to IBR¹ the deferral until July 21, 2014, of the application of PSD permitting requirements to biogenic CO₂ emissions from bioenergy and other biogenic stationary sources as promulgated in the rule entitled “Deferral for CO₂ Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs,” Final Rule, 76 FR 43490, (July 20, 2011) (hereafter referred to as the “CO₂ Biomass Deferral Rule”). The July 30, 2012, SIP submittal revises North Carolina’s air quality rule 15A North Carolina Administrative Code (NCAC) 02D.0544 – *Prevention of Significant Deterioration Requirements for Greenhouse Gases* to IBR the version of 40 CFR 51.166 as of July 20, 2011.² This version of 40 CFR 51.166 includes the July 20, 2011, CO₂ Biomass Deferral Rule revision to the definition of “subject to regulation” deferring PSD applicability to biogenic CO₂ emissions from bioenergy and other biogenic stationary sources, until July 21, 2014. Today, EPA is proposing to approve North Carolina’s July 30, 2012, SIP revision.

¹ Throughout this document IBR means incorporate or incorporates by reference.

²The scope of the 15A NCAC 02D.0544 IBR of 40 CFR 51.166 is limited to the aspects of the federal regulation related to CO₂ Biomass Deferral Rule revisions. PSD applicability for all other regulated NSR pollutants, as defined at 40 CFR 51.166 and 52.21, is addressed in the North Carolina SIP by regulation 15A NCAC 02D.0530.

II. What is the Background for EPA’s Proposed Action?

A. The GHG Tailoring Rule

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, entitled “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule” (hereafter referred to as the GHG Tailoring Rule), for the purpose of relieving overwhelming permitting burdens from the regulation of GHG that would, in the absence of the rule, fall on permitting authorities and sources. *See* 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program of the CAA. In particular, EPA established in the GHG Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG emitters.³ On, May 17, 2011,⁴ NC DENR submitted a SIP revision to EPA to IBR into the North Carolina SIP Rule 15 NCAC 02D.0544 - the version of 40 CFR 51.166 as of June 3, 2010, and effective August 3, 2010, which included the GHG Tailoring Rule. EPA took final action to approve North Carolina’s May 17, 2011, SIP revision on October 18, 2011. *See* 76 FR 64240. Please refer to the GHG Tailoring Rule for specific details on the PSD applicability provisions.

³ Please refer to the July 12, 2012 (77 FR 41051) rulemaking finalizing GHG Tailoring Rule Step 3.

⁴ North Carolina’s proposed SIP revision incorporated a new PSD rule into North Carolina’s SIP for GHG, at 15A NCAC 02D.0544 – *Prevention of Significant Deterioration Requirements for Greenhouse Gases*, to address the thresholds for GHG permitting applicability.

B. EPA's CO₂ Biomass Deferral Rule

In the July 20, 2011, final rulemaking, EPA deferred until July 21, 2014, the consideration of CO₂ emissions from bioenergy and other biogenic sources (hereinafter referred to as “biogenic CO₂ emissions”) when determining whether a stationary source meets the PSD and title V⁵ applicability thresholds, including those for the application of best available control technology (BACT).⁶ Stationary sources that combust biomass (or otherwise emit biogenic CO₂ emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO₂ emissions resulting from those actions. The deferral applies only to biogenic CO₂ emissions and does not affect non-GHG pollutants or other GHG (*e.g.*, methane and nitrous oxide) emitted from the combustion of biomass fuel. Also, the deferral only pertains to biogenic CO₂ emissions in the PSD and title V program and does not pertain to any other EPA programs such as the GHG Reporting Program.

Biogenic CO₂ emissions are defined as emissions of CO₂ from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of “biogenic CO₂ emissions” include, but are not limited to:

- CO₂ generated from the biological decomposition of waste in landfills, wastewater treatment, or manure management processes;

⁵ EPA's July 20, 2011, CO₂ Biomass Deferral Rule made changes to the federal PSD and title V permitting programs. North Carolina's July 30, 2012, submission did not revise the state's title V program to adopt the CO₂ deferral rule. Furthermore, the title V permitting program is not part of the North Carolina federally approved SIP.

⁶ As with the Tailoring Rule, the CO₂ Biomass Deferral Rule addresses both PSD and title V requirements.

- CO₂ from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment, or manure management processes;
- CO₂ from fermentation during ethanol production or other industrial fermentation processes;
- CO₂ from combustion of the biological fraction of municipal solid waste or biosolids;
- CO₂ from combustion of the biological fraction of tire-derived fuel; and,
- CO₂ derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

The deferral is intended to be a temporary measure, in effect for no more than three years, to allow the Agency time to conduct detailed examination of the science and technical issues related to accounting for biogenic CO₂ emissions, and determine what, if any, treatment of biogenic CO₂ emissions should be in the PSD and title V program. The biomass deferral rule is not EPA's final determination on the treatment of biogenic CO₂ emissions in those programs. The Agency plans to complete its science and technical review and any follow-on rulemakings within the three-year deferral period and further believes that three years is ample time to complete these tasks. It is possible that the subsequent rulemaking, depending on the nature of EPA's determinations, would supersede the biomass deferral rulemaking and become effective in fewer than three years. In that event, North Carolina may revise its SIP accordingly.

EPA's final biomass deferral rule is an interim deferral for biogenic CO₂ emissions only and does not relieve sources of the obligation to meet the PSD and title V permitting requirements for other pollutant emissions that are otherwise applicable to the source during the

deferral period or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO₂ emissions from a particular source during the three-year effective period and the study and future rulemaking do not provide for a permanent exemption from PSD and title V permitting requirements for the biogenic CO₂ emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO₂ emissions would have to be appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes, consistent with that subsequent rulemaking and the final GHG Tailoring Rule (*e.g.*, a major source determination for title V purposes or a major modification determination for PSD purposes). EPA also wishes to clarify that the Agency does not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires.

40 CFR 52.21(w) requires that any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO₂ emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its

biogenic CO₂ emissions after the deferral expires, the source will need to consider its biogenic CO₂ emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this proposed approval of the deferral into the North Carolina SIP, and will be addressed through subsequent rulemaking. The results of EPA's review of the science related to net atmospheric impacts of biogenic CO₂ and the framework to properly account for such emissions in title V and PSD permitting program based on the study are prospective and unknown. Thus, EPA is unable to predict which biogenic CO₂ sources, if any, currently subject to the deferral as incorporated into the North Carolina SIP would be subject to any permanent exemptions or which currently deferred sources would be potentially required to account for their emissions in the future rulemaking EPA has committed to undertake for such purposes in three or fewer years. Only in that rulemaking can EPA address the question of extending the deferral or putting in place requirements that would have the equivalent effect on sources covered by the biomass deferral. Once that rulemaking has occurred, North Carolina may address related revisions to its SIP.

III. What is EPA's Analysis of North Carolina's SIP Revision?

North Carolina's PSD program consists of Rule 15A NCAC 2D.0530 – *Prevention of Significant Deterioration* and 15A NCAC 02D.0544 – *Prevention of Significant Deterioration Requirements for Greenhouse Gases*, both of which IBR the provisions for the preconstruction PSD review process as published at 40 CFR 51.166. Rule 15A NCAC 2D.0530 applies to major

stationary sources having the potential to emit at least 100-tons per year (tpy) or 250-tpy or more of a regulated NSR pollutant, depending on the type of source or modifications constructing in areas designated attainment or unclassifiable with respect to the national ambient air quality standards. Rule 15A NCAC 02D.0544 (the subject of this proposed rulemaking) only applies to GHG-emitting sources.

In the July 20, 2011, CO₂ Biomass Deferral Rule, similar to the approach with the Tailoring Rule, EPA incorporated the biomass deferral into the federal PSD program by amending the definition of “subject to regulation” under 40 CFR 51.166 and 52.21, respectively. North Carolina’s July 30, 2012, SIP revision IBR into the North Carolina SIP 40 CFR 51.166 as of July 20, 2011, which includes the CO₂ Biomass Deferral revision to the definition of “subject to regulation” deferring, until July 21, 2014, PSD applicability to biogenic CO₂ emissions from bioenergy and other biogenic stationary sources. These changes to North Carolina’s Rule 15A NCAC 02D.0544 became state effective on January 28, 2011. EPA is proposing to approve these changes to North Carolina’s Rule 15A NCAC 02D.0544 to update the State’s existing SIP-approved PSD program to be consistent with federal NSR regulations respecting the CO₂ Biomass Deferral Rule (at 40 CFR 51.166), and the CAA.

IV. Proposed Action

EPA is proposing to approve North Carolina’s July 30, 2012, SIP revision to IBR changes to federal PSD regulations at 40 CFR 51.166 promulgated in the June 3, 2010, CO₂ Biomass Deferral Rule. EPA has made the preliminary determination that this SIP revision, with

regard to the aforementioned proposed actions, is approvable because it is consistent with section 110 of the CAA and EPA NSR permitting regulations.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 8, 2013.

A. Stanley Meiburg,
Acting Regional Administrator,
Region 4.

[FR Doc. 2013-09314 Filed 04/18/2013 at 8:45 am; Publication Date: 04/19/2013]